

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HIGHLAND PARK CDO I GRANTOR  
TRUST, SERIES A,

Plaintiff,

Case No. 08 CV 01670 (NRB)

-against-

MATTHEW STUDER, FRED GRAFT,  
ERNIE MALAS, AND PETER  
CORATOLA,

KATZ SUPPLEMENTAL  
AFFIDAVIT IN FURTHER  
SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS  
THE COMPLAINT OR  
STAY THE PROCEEDINGS

Defendants.

-----X

STATE OF NEW YORK )  
                      )ss.:  
COUNTY OF NEW YORK)

DANIEL E. KATZ, being duly sworn, deposes and says:

1. I am a member of the law firm of Bauman Katz & Grill LLP, attorneys for Defendants Matthew Studer, Fred Graft, Ernie Malas, and Peter Coratola (collectively, "Defendants") in the above-entitled action. I respectfully submit this Affidavit, based upon personal knowledge and records on file in my office, in support of Defendants' motion for an Order, (i) pursuant to Rules 12(b)(7) and 19 of the Federal Rules of Civil Procedure, dismissing the Complaint of Plaintiff Highland Park CDO I Grantor Trust, Series A ("Plaintiff" or "Highland Park") in its entirety on the basis that Plaintiff has failed to name an indispensable party, to wit, non-party Wells Fargo Bank, N.A., which holds an interest in a loan that is senior to Plaintiff's purported interest in a junior loan agreement, or, in the alternative; (ii) pursuant to the Court's inherent authority, staying any and all proceedings in the instant action pending resolution of a related action in an Ohio Trial Court, entitled *Wells Fargo Bank, N.A. v. Platinum*

*Lodging LLC, et al.*, Case No. 08CVE03-03668 (Franklin Cty.) (the “Ohio Action”); and  
(iii) such other and further relief as this Court deems just and proper under the circumstances.

2. The purpose of this Affidavit is to bring to the Court’s attention the annexed decision and order entered on May 28, 2008 in the Common Pleas Court, Franklin County, in connection with the Ohio Action (the “Order”). (A copy of the Order is annexed hereto as Exhibit “1”). Pursuant to the Order, Defendants’ motion to join Highland Park as a party-defendant in the Ohio Action was granted.

3. Because the Order was issued after Defendants’ submission of their moving papers and is pertinent to the within motion, the Order will be further commented on in Defendants’ reply papers.

**WHEREFORE**, Defendants Matthew Studer, Fred Graft, Ernie Malas, and Peter Coratola respectfully request an Order, pursuant to Rules 12(b)(7) and 19 of the Federal Rules of Civil Procedure, dismissing Plaintiff’s Complaint in its entirety, together with an award of such other and further relief as this Court deems just and proper under the circumstances.



\_\_\_\_\_  
Daniel E. Katz (7222)

Sworn to before me this  
30<sup>th</sup> day of May, 2008



\_\_\_\_\_  
Notary Public

YASMIN R. SAEED  
Notary Public, State of New York  
No. 02SA6157711  
Qualified in New York County  
Commission Expires Dec. 11, 2010

**EXHIBIT “1”**

**IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO**

|                                            |                        |
|--------------------------------------------|------------------------|
| WELLS FARGO BANK, N.A., AS TRUSTEE )       |                        |
| FOR THE MORGAN STANLEY CAPITAL I )         |                        |
| INC. COMMERCIAL MORTGAGE PASS- )           |                        |
| THROUGH CERTIFICATES SERIES 2006- )        |                        |
| XLF, by and through its Special Servicer ) |                        |
| Midland Loan Services, )                   |                        |
| Plaintiff, )                               | CASE NO. 08CVE03-03668 |
| v.                                         | JUDGE REECE            |
| PLATINUM LODGING LLC, <i>et al.</i> , )    |                        |
| Defendants. )                              |                        |

**ORDER GRANTING JOINT MOTION TO JOIN ADDITIONAL  
PARTY AS DEFENDANT**

This matter is now before the Court upon Defendants Platinum Lodging, LLC, Matthew Studer, Fred Graft, Ernie Malas and Peter Coratola's Joint Motion to Join Highland Park CDO I Grantor Trust, Series A ("Highland Park") as an additional party defendant to Plaintiff's claim pursuant to Civil Rules 19(A)(2)(b), 19(A)(3) and 21. Having reviewed the Joint Motion and pleadings to date, it is hereby **ORDER, ADJUDGED and DECREED** that the Joint Motion is **GRANTED**.

Plaintiffs are hereby ordered to amend their complaint to join Highland Park as a defendant in this action and to serve a copy of it to Highland Park consistent with Ohio Civil Rules.

**IT IS SO ORDERED.**

*Judge Guy L. Reece II*

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JUDGE REECE

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Col - 125710.1

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2008 MAY 28 AM 11:17  
CLERK OF COURTS

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